

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00795
45-001-02-1-5-00796
Parcel #: 001-25-45-0394-0018
001-25-45-0394-0019
Petitioner: Martin E. Darcy
Respondent: Department of Local Government Finance
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held between the Petitioner and the Respondent on March 4, 2004. The Department of Local Government Finance (the "DLGF") determined that the Petitioner's property tax assessments were \$14,800 for parcel number 001-25-45-0394-0018; and \$109,400 for parcel number 001-25-45-0394-0019.
2. The Petitioner filed a Form 139L for each parcel on April 30, 2004.
3. The Board issued a notice of hearing for each parcel to the parties on October 18, 2004.
4. Special Master Peter Salveson held a hearing in Crown Point on November 18, 2004.

Facts

5. The subject properties are located at 1040 and 1050 N. Vermillion Street, Gary.
6. The subject properties are 2 residential lots, each measuring 0.139 acres. Parcel 001-25-45-0394-0018 is vacant land and Parcel 001-25-45-0394-0019 is land and a single family residence.
7. The Special Master did not conduct an on-site visit of the properties.
8. The assessed value of the subject properties as determined by the DLGF:
Parcel 001-25-45-0394-0018
Land \$14,800 Improvements \$0 Total \$14,800,

Parcel 001-25-45-0394-0019

Land \$18,500 Improvements \$90,900 Total \$109,400.

9. The assessed value requested by the Petitioner:
The Petitioner requested a total value of \$107,900 for both Parcel 001-25-45-0394-0018 and Parcel 001-25-45-0394-0019.
10. The following persons were present and sworn in at hearing:
For Petitioner – Martin Darcy, property owner,
For Respondent – Diane Spenos, DLGF.

Issue

11. Summary of Petitioner’s contentions in support of alleged error in assessment:
 - a) The Petitioner contends that the assessment is incorrect because it does not correctly reflect the market value of the subject properties. The property could not have sold for the amount of the assessed value in 1999. *Darcy testimony.*
 - b) The Petitioner contends that both properties were purchased in October of 1998 for approximately \$107,900. The Petitioner presented a closing statement dated October 27, 1998 showing a contract sales price of \$107,900. The Petitioner also provided a survey of the subject properties showing that the improvements are on both lots 18 and 19. *Darcy testimony; Petitioner Exhibit 8, 10.*
12. Summary of Respondent’s contentions in support of the assessment:
 - a) Based on the evidence presented by the Petitioner, the Respondent recommends that the total value of both parcels be changed to \$109,100. The recommended value is the actual purchase price of the subject properties adjusted for time from October 1998 to January, 1999. *Spenos testimony.*

Record

13. The official record for this matter is made up of the following:
 - a) The Petition,
 - b) The tape recording of the hearing labeled Lake County 800,
 - c) Exhibits:
Petitioner Exhibit 1 – A copy of the Form 11 for Parcel 001-25-45-0394-0019,
Petitioner Exhibit 2 – A copy of the Form 11 for Parcel 001-25-45-0394-0018,
Petitioner Exhibit 3 – A copy of the Final Assessment Determination for Parcel 001-25-45-0394-0019,

Petitioner Exhibit 4 – A copy of the Final Assessment Determination for Parcel 001-25-45-0394-0018,
Petitioner Exhibit 5 – A copy of the Form 139L for Parcel 001-25-45-0394-0019,
Petitioner Exhibit 6 – A copy of the Form 139L for Parcel 001-25-45-0394-0018,
Petitioner Exhibit 7 – Mortgage Commitment-Closing Conditions Form,
Petitioner Exhibit 8 – HUD-1 Settlement Statement – 27 October 1998,
Petitioner Exhibit 9 – Initial Mortgage Payment/Escrow Account Form,
Petitioner Exhibit 10 – Surveyor Location Report for 1050 N. Vermillion,
Respondent Exhibit 1 – Form 139L,
Respondent Exhibit 2 – Subject Property Record Card,
Respondent Exhibit 3 – Subject Photo,
Respondent Exhibit 4 – Comparable Sales Sheet,
Respondent Exhibit 5 – Comparable Property Record Cards and Photos,
Board Exhibit A – Form 139L Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
 - c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner provided sufficient evidence to support the Petitioner’s contention. This conclusion was arrived at because:
- a) The undisputed testimony shows that the current assessment is incorrect. *Darcy testimony*; *Spenos testimony*; *Petitioner Exhibit 7, 8, 9*. The remaining issue is

whether the value presented by the Petitioner is the correct value or whether the value recommended by the Respondent is the correct value.

- b) The Petitioner offered the mortgage commitment form, the settlement statement, and mortgage payment/escrow account form pertaining to the purchase of the subject properties showing that the subject properties were purchased in October 1998 for \$107,900. *Petitioner Exhibit 7, 8, 9*. The October 1998 actual purchase price of the subject properties is a reasonable indicator of what the subject properties' value was on January 1, 1999.
- c) The Respondent suggested using a time adjusted value of \$109,100 based on the October 1998 purchase price and adjusted upward for market increases between October 1998 and January 1, 1999. *Spenos testimony*. However, the Respondent did not offer any evidence to substantiate the increase in value during the 2 month time period. The Respondent merely claimed that the purchase price should be adjusted for time. Without any evidence to substantiate the adjustment, the Respondent's claim is merely conclusory and is not sufficient to rebut the Petitioner's evidence of value.

Conclusion

- 16. The Petitioner made a prima facie case establishing that the current value for the subject properties is incorrect and that the correct value should be a total of \$107,900. The Respondent failed to rebut the Petitioner's value of \$107,900. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.